IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

ARBITRATION PETITION NO.348 OF 2003

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C.P.Ships (UP) Ltd. ...Petitioners

v/s.

Vijay Agarwal & Ors. ...Respondents

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Mr.D.C. Gomes for the Petitioners.

Mr.A.M. Vernekar for Respondents Nos. 1 to 4.

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CORAM: D.K.DESHMUKH, J.

DATED: 16TH MARCH,2005

P.C.:

1. This Petition is filed under Section 48 of the Arbitration & Conciliation Act for enforcement of the

award, at Exh.C, which is a foreign award.

2. Perusal of the award shows that it has been passed against the Respondents Nos. 1 to 4, who according to the award are claiming the partnership Rohan Exports (India). In the petition, Rohan Exports (India) is joined as Respondent No.5 as follows:

> Rohan Exports (India), a partner-
> ship firm carrying on business in
> Bombay at/from Pushpavati Building
> No.2, 2nd Floor, Chandanwadi,
> Girgaum Road, Mumbai- 400 002.

3. According to copy of statement of claim served on Respondents Nos. 1 to 4, Respondents Nos.1 to 4 have been described thus:

> Vijay Agarwal, Radheshyam Agarwal,
> Yamunadutt Agarwal and Kailash Agarwal
> (All trading as a Partnership Rohan
> exports (India) incorporated under the
> Laws of Pakistan.

4. It is an exparte award passed against the Respondents Nos. 1 to 4 as partners of Rohan Exports (India) incorporated under the Laws of Pakistan. According to Respondents Nos. 1 to 4, they are not partners of Rohan Exports (India) incorporated under the Laws of Pakistan. In the reply filed in the petition in paragraph 2(b), this contention is specifically raised on behalf of the Respondents Nos. 1 to 4. Perusal of the rejoinder of the Petitioner however, shows that this contention has not been effectively dealt with. Thus, it is not in dispute that the foreign award, enforcement of which is sought, is passed against basically Rohan Exports (India), which according to the Petitioner is incorporated in Pakistan and the liability of Respondents Nos. 1 to 4 is as partners. By order dated 3rd November, 2003, this petition has been dismissed against the Respondent No.5. Perusal of the bill of lading, which according to the Petitioner constitutes the arbitration agreement, shows the shipper is described as "Oriental Clearing Agencies" and it is shown to have been issued on account of "Rohan Exports (India)". Admittedly, none of the Respondents Nos. 1 to 4 have signed the bill of lading. Therefore, the liability of Respondents Nos.

1 to 4 would be as partners of Rohan Exports (India) and as there are serious disputes about identity of Rohan Exports, in my opinion, it will not be appropriate to permit enforcement of the award against the Respondents Nos. 1 to 4. It is further to be seen here that the Petitioner has not produced any material on record to show that the Rohan Exports (India) mentioned in the bill of lading, Rohan Exports (India) incorporated under the laws of Pakistan described in the statement of claim and Rohan Exports (India) a partnership firm as described in the petition are the same. There is also no material placed on record to show that the Respondent No.5 /Rohan Exports (India) is registered firm.

5. Taking overall view of the matter, therefore, it will be appropriate to dispose of the Petition. The Petition is accordingly disposed of. Petitioner is directed to pay costs of this petition to the Respondents Nos. 1 to 4, as incurred by the Respondents Nos. 1 to 4.

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